

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2006-0302, State of New Hampshire v. Sheirkh Jobe, the court on May 31, 2007, issued the following order:**

Following a jury trial, the defendant was convicted of attempted aggravated felonious sexual assault and two counts of simple assault. On appeal, he argues that the trial court erred when it ruled that the defense had opened the door to expert testimony that it is common for victims to make piecemeal disclosures of sexual assaults. We affirm.

The admissibility of evidence is generally within a trial court's discretion; its ruling will be affirmed absent an unsustainable exercise of discretion. State v. Morrill, 154 N.H. 547, 550 (2006). In this case, the State argues that the contested evidence was admissible under the doctrine of specific contradiction. See id. at 549-51 (discussing opening the door doctrine and distinction between doctrines of curative admissibility and specific contradiction).

We will assume without deciding that the trial court's admission of the evidence was in error. The State argues that any error was harmless. See State v. Pseudae, 154 N.H. 196, 202 (2006) (error harmless beyond reasonable doubt if alternative evidence of defendant's guilt is of overwhelming nature, quantity or weight and if inadmissible evidence is merely cumulative or inconsequential to strength of State's evidence of guilt).

In this case, the cited testimony was limited and similar to testimony that defense counsel had already elicited from the same witness on cross-examination. Specifically, when previously asked by defense counsel whether the victim indicated during her interview that she was not ready to talk or was uncomfortable, the same witness responded: "She got angry, but it's not abnormal for children not to fully tell things on the interview." The defense did not move to strike this evidence. The record also contains evidence that the victim was reluctant to describe the assaults, that she was withdrawn and sad on the day after the assaults and that she chose to end her visit with her mother several days earlier than planned. The defendant's acquittal on one of the charges indicates that the challenged testimony had no effect on the jury's ability to assess the victim's credibility and review each charge independently. See State v. Cossette,

151 N.H. 355, 359 (2004). Given the alternative evidence of the defendant's guilt and the inconsequential and cumulative nature of the challenged testimony, we conclude that any error in admitting it was harmless.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**